PUBLICATION

CMS Proposed Rule on Medicare PPS and SNFs, Part II [Ober|Kaler]

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In the May 6 Federal Register, at pages 25767-25797, the Centers for Medicare & Medicaid Services (CMS) published the Medicare program's proposed regulation entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015" (Proposed SNF Rule). The Proposed SNF Rule is a combination of updates to fiscal year (FY) 2015 Part A SNF payment rates, changes to the manner in which that rate will be calculated, requests for comments, and proposed regulations. Comments are due June 30.

This is the second of two email alerts on the Proposed SNF Rule. Part I is available here.

Administrative Presumption

CMS referenced the "administrative presumption" in favor of the resident's need for skilled care if the resident is classified under the first 52 resource utilization group (RUG) categories out of the 66 RUGs. CMS used the notice to remind SNFs of their responsibility to ensure that level-of-care determinations are appropriate, timely, and medically necessary, including the need for "careful monitoring" for changes in the resident's continuing need for skilled care after the assessment reference date of the five-day assessment.

Consolidated Billing

With respect to consolidated billing, CMS invites comments identifying Healthcare Common Procedure Coding System codes in four service categories of chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices representing medical advances that should qualify as exclusions from the SNF prospective payment system (PPS) rate.

Swing Beds

CMS notes that all non-critical access swing bed rural hospitals are under the SNF PPS rates.

SNF Therapy Research Project

CMS is in the second phase of the project that is exploring alternatives to the existing model for reimbursing for therapy under SNF PPS rates, which are presently based on a seven-day look-back period. Access the CMS report. CMS will convene a technical expert panel as part of this process. Here, too, CMS solicits comments on therapy reimbursement alternatives.

Observed Therapy Trends

CMS does not propose a new policy, but trends are pointed out. These include an increase in the percentage of billed days of service being classified into the ultra-high rehabilitation (RU) RUG from 44.8% in FY 2011 to

48.6% in FY 2014. Access the CMS memo. CMS notes the steady increase of residents classified into one of the RU RUGs. CMS also observes that in the cases of RU and very high rehabilitation RUGs, the amount of therapy on the minimum data set is "just enough" to surpass the relevant therapy minute threshold for the given therapy RUG category.

Civil Money Penalties

CMS collects civil money penalties (CMPs) as a result of the survey process. Under federal law, a portion of these amounts may be used to support activities to benefit residents. CMS gives examples of appropriate use of such funds such as providing assistance when facilities close and residents need to be relocated, support for resident and family councils and other consumer involvement in assuring quality care, or other facility improvement initiatives. This can include joint training of facility staff and surveyors, hiring temporary managers, and other activities. CMS identified concerns about how such CMPs had been used, making clear that they cannot be used for survey and certification operations. Also, 24 states had not approved any projects using CMP funds. Some had accumulated large reserves of such funds. Detailed regulations are proposed for the use and approval process related to the use of CMP funds.

Health Information Exchange in SNFs

The U.S. Department of Health & Human Services is committed to accelerating health information exchange through use of electronic health records and other types of health information technology (HIT). CMS uses the SNF PPS rule to identify resources in this area, including referring to a proposed regulation that would more easily accommodate certification of HIT used in settings where incentives are not otherwise available such as long term care.

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